



veterinarians that recommend dental chews for at-home oral care” (the “Advertising Claim”) on Greenies packaging and in television, print, internet, and other commercial advertising. I understand that Paragon also seeks an order requiring Mars to abate and remediate existing advertising or packaging bearing the Advertising Claim, including by providing retailers of Greenies dental chews with a copy of the Court’s preliminary injunction order and with gummed stickers or other materials suitable for covering or obscuring the Advertising Claim on existing stocks of Greenies dental chew products and promotional or point of sale materials or displays.

5. For purposes of this declaration, I assume that an injunction entered against Mars would be enforceable against The Nutro Company (“Nutro”).

6. I have estimated some of the costs that would be incurred to comply with the injunctive relief sought by Paragon.

7. The following actions would need to be taken comply with the injunction sought by Paragon: (1) permanently change Greenies packaging graphics to remove the Advertising Claim; (2) apply stickers to Greenies packaging that already bears the Advertising Claim; (3) change the Greenies website; (4) alter depictions of Greenies packages in television commercials; and (5) change Greenies point-of-sale displays.

8. I estimate that these actions would cost at least [REDACTED] to implement. I explain how I calculated this amount below.

**I. Estimated Cost to Change Permanently Greenies Packaging Graphics.**

9. I estimate that it would cost at least [REDACTED] to change permanently Greenies packaging graphics to remove the Advertising Claim. I calculate this amount as follows.

10. The graphics on Greenies packages are printed using a “plate.” Each type of Greenies package requires a unique plate. The graphical design for each package is permanently inscribed on the plate. To change the graphical design, a new plate must be created.

11. Each plate costs [REDACTED]. This is a standard, fixed cost for every new plate.

12. [REDACTED] different plates are used to print all types and sizes of Greenies packages. All [REDACTED] plates bear the Advertising Claim.

13. Based on the foregoing, I estimate that it would cost at least [REDACTED] [REDACTED] to change permanently all Greenies packaging graphics to remove the Advertising Claim. This amount is based solely on the cost of new plates. It does not include any labor (including graphical design) or shipping costs. For this reason, [REDACTED] actually underestimates the total cost to change Greenies’ packaging to remove permanently the Advertising Claim.

## **II. Estimated Cost to Apply Stickers to Greenies Packages.**

14. I estimate that it would cost at least [REDACTED] to apply stickers to all Greenies packages to obscure the Advertising Claim until such time as the packaging can be permanently changed. I calculate this amount as follows.

### **A. Background on the Greenies Manufacturing and Distribution Process.**

15. Greenies are manufactured at a single plant in Kansas City, Missouri. Third-party suppliers manufacture Greenies’ packaging. The Kansas City plant maintains an inventory of finished packaging stock sufficient to supply it for approximately one week. The packaging suppliers maintain an inventory of finished packaging stock sufficient to supply the Kansas City plant for approximately two weeks.

16. Filled Greenies packages are packed into cardboard cases at the Kansas City plant. The cases are sealed with packing tape, stacked on shipping pallets, and shrink-wrapped. At any given time, approximately four weeks' worth of finished Greenies inventory is stored in shrink-wrapped pallets at the Kansas City facility.

17. When it comes time to ship Greenies, the pallets are typically loaded onto trucks, which deliver the pallets to customers around the United States. Most pallets are delivered to distribution centers. The distribution centers, in turn, ship Greenies to retail outlets, where they are added to inventory and placed on shelves for purchase.<sup>1</sup>

18. Thus, to sticker existing Greenies inventory, stickers would need to be applied to (1) at least four weeks' worth of finished Greenies inventory stored at the Kansas City plant; (2) three weeks' worth of packaging stock in inventory at the Kansas City plant and packaging suppliers' facilities; and (3) all Greenies packages that have already left the Kansas City plant and are either at retail stores or en route thereto.

19. In addition, stickers would need to continue to be applied to new Greenies packaging until permanent graphics changes are implemented. It takes approximately 10 weeks to make a permanent graphics change. This estimate is based on previous experience with packaging changes, and is the amount of time used internally for forecasting purposes. It includes time to revise and approve a revised graphics file, create a new graphics plate, ship the plate to the packaging supplier's production facility, install the plate, begin printing new packaging using the plate, and exhaust existing packaging stock. The amount of time required depends largely on suppliers. In my experience, it has not been possible materially to expedite this process.

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<sup>1</sup> The process I have described is the typical distribution process. There may be exceptions.

20. Accordingly, I estimate that stickers would need to be applied to all new packaging stock received from suppliers for at least 10 weeks after the entry of Paragon's proposed injunction.

**B. Estimated Cost to Apply Stickers to Finished Greenies Inventory.**

21. I estimate that it would cost at least [REDACTED] to sticker four weeks' worth of finished Greenies inventory stored at the Kansas City plant. I calculate this amount based, in part, on Nutro's experience stickering packages of "Rotations" dry dog food earlier this year.<sup>2</sup>

22. Nutro was able to obtain stickers for the Rotations stickering project from a third-party supplier at a cost of approximately [REDACTED] per sticker. That cost includes the cost of raw materials, graphics and dies, and shipping to Nutro's facilities. For the purpose of the calculations herein, I assume that stickers could be obtained for Greenies packages at the same [REDACTED] per-sticker price.

23. For the Rotations stickering project, approximately [REDACTED] finished Rotations packages were stacked on pallets and shrink-wrapped at a warehouse in Victorville, California. To sticker those packages, Nutro needed to transport each pallet from a storage location to a stickering workspace, cut the shrink wrap from the pallet, remove the bags from the pallet, apply a sticker to each bag, re-stack the bags on the pallet, re-shrink-wrap the pallet, and move the pallet back to its storage location.

24. The total labor cost to apply stickers to the above-described [REDACTED] Rotations packages was approximately [REDACTED]. Thus, the labor cost of stickering each Rotations package at the Victorville warehouse was approximately [REDACTED]

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<sup>2</sup> The decision to apply stickers to Rotations was voluntary and was not made in connection with any lawsuit or court order.

25. Finished Greenies and Rotations are similar in that both products are stored on pallets and shrink-wrapped. That said, Greenies are packed into sealed cardboard cases, whereas Rotations are not. Stickerizing palletized Greenies cases would therefore require a number of additional steps (to unpack and repack each case) that the Rotations stickerizing project did not require. Based on my experience and the experience of a Nutro industrial engineer with whom I have consulted, I estimate that it would require approximately twice as much labor to sticker palletized packages of Greenies as it did to sticker palletized packages of Rotations. Accordingly, I estimate that it would cost approximately [REDACTED] per package [REDACTED] to apply stickers to palletized packages of Greenies at the Kansas City plant.

26. Thus, I estimate that it would cost [REDACTED] per package to sticker finished Greenies inventory at the Kansas City plant [REDACTED]. To arrive at an estimated cost to sticker four weeks' worth of finished Greenies, I multiply [REDACTED] per package by the estimated total number of finished Greenies packages in inventory.

27. To estimate the total number of finished Greenies packages in inventory, I obtained the forecasted tonnage that Nutro plans to produce for each Greenies package type during each of the five four-week periods remaining in 2015.<sup>3</sup> Nutro manufactures Greenies packages according to these tonnage forecasts. The forecasts are therefore an accurate source for estimating the total finished packages Nutro will produce during any given four-week period.

28. To translate tonnage forecasts into estimated numbers of packages, I multiplied tonnage for each package type by ounces per ton (35,290), then divided the result by ounces per package for that package type. For example, Nutro has forecast producing [REDACTED] tons of one type of 18-ounce Greenies package during the final four-week period of 2015. Thus, the total

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<sup>3</sup> For forecasting purposes, Nutro divides the year into 13 four-week manufacturing periods.

number of packages of that type slated for production during that period are [REDACTED]

29. After translating tonnage forecasts for each package type into total numbers of packages, I summed the results to arrive at the total number of Greenies packages Nutro expects to manufacture during each of the five four-week periods remaining in 2015. The totals are as follows:

Period	9	10	11	12	13
Forecasted Greenies Packages	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

30. The average of the above five periods is [REDACTED] packages. As I explained above, the Kansas City Plant typically has at least four weeks' worth of finished, palletized Greenies packages in inventory. Accordingly, I estimate that at any given time during the fall of 2015, the Kansas City Plant will have roughly [REDACTED] finished, palletized Greenies packages in inventory.

31. Based on the foregoing, I estimate that it would cost [REDACTED] [REDACTED] to sticker four weeks' worth of inventory at the Kansas City plant.

### **C. Estimated Cost to Sticker Packaging Stock in Inventory.**

32. I estimate that it would cost at least [REDACTED] to sticker three weeks' worth of packaging stock in inventory at the Kansas City plant and at suppliers' facilities. To calculate this amount, I again rely on Nutro's experience stickering packages of "Rotations" dog food earlier this year.

33. Once again, I assume stickers could be obtained at the same, [REDACTED] per-sticker cost paid in connection with the Rotations stickering project.

34. Empty Greenies packaging stock is stacked and stored on shrink-wrapped cardboard pallets. The process for applying stickers to Greenies packaging stock would be similar to the process for stickering finished Rotations packages: employees would move each shrink-wrapped pallet from its storage location to a stickering workspace, remove the shrink-wrap, un-stack the packaging, apply a sticker to each package, re-stack the packaging, re-shrink-wrap the pallet, and move the pallet back to its storage location. Accordingly, I estimate that the labor cost to sticker empty Greenies' packaging stock would be the same as the labor cost to sticker Rotations dog food packages, *i.e.*, [REDACTED] per sticker.

35. Based on the foregoing estimates, I estimate that the total cost to sticker Greenies packaging inventory would be [REDACTED]

36. As explained above, the average number of Greenies packages forecasted to be produced during each of the five remaining four-week periods in 2015 is [REDACTED]. *Supra* ¶ 30. This means Nutro will produce, on average, [REDACTED] Greenies packages per week [REDACTED]. Since the Kansas City plant and its suppliers keep approximately three weeks' worth of packaging stock on-hand, I estimate that the Kansas City plant and its packaging suppliers will have an inventory of [REDACTED] empty packages [REDACTED] that would require stickering.

37. Accordingly, I estimate that it would cost [REDACTED] [REDACTED] to sticker three weeks' worth of packaging stock.

#### **D. Estimated Cost of Ongoing Stickering Until Graphics Are Changed.**

38. In addition to stickering existing Greenies packages and packaging inventory, as I explained above, stickering of Greenies packaging would need to continue for approximately 10 weeks, the amount of time it would likely take permanently to change packaging graphics. *See*



*supra* ¶ 19. I estimate that it would cost at least [REDACTED] to continue to sticker Greenies packaging until the graphics are permanently changed.

39. The process for ongoing stickering of Greenies packaging would be very similar to the process for stickering packaging stock in inventory, described above. *Supra* ¶¶ 32–35. Workers would need to move palletized packaging stock to a stickering workspace, remove the shrink wrap, un-stack the packaging, sticker each package, re-stack the packaging on the pallet, re-shrink-wrap the pallet, and move the pallet to a storage location. Accordingly, I estimate that the labor and materials costs for ongoing stickering would be similar to the labor and materials costs to sticker packaging stock already in inventory, *i.e.*, [REDACTED] per package. *See supra* ¶ 35.

40. As I explained above, Nutro has forecast that it will produce, on average, [REDACTED] Greenies packages per week during the remainder of 2015. *Supra* ¶ 36. Over the course of 10 weeks, I estimate that stickers would need to be applied to an additional [REDACTED] Greenies packages ([REDACTED] packages per week \* 10 weeks).

41. Accordingly, I estimate that it would cost [REDACTED] [REDACTED] to continue to sticker Greenies packaging until the packaging graphics are permanently changed.

#### **E. Estimated Cost to Sticker Packages Already at Retail Outlets or In Transit.**

42. I estimate that it would cost at least [REDACTED] to sticker all Greenies packages that have already left the Kansas City plant and are either at retail outlets or in transit thereto. I calculate this amount as follows.

43. Once again, I assume the necessary stickers could be obtained at the same, [REDACTED] per-sticker cost paid for the Rotations stickering project.

44. In order to sticker all Greenies packages already in the distribution chain, I estimate that stickers would be needed to cover approximately eight weeks' worth of finished goods. Assuming, as explained above, that Nutro produces [REDACTED] packages of Greenies per week, I estimate that [REDACTED] stickers ([REDACTED] packages per week \* 8 weeks) would need to be procured.

45. Thus, I estimate that it would cost [REDACTED] ([REDACTED] per sticker \* [REDACTED] stickers) to obtain the stickers for all Greenies packages already at retail outlets or in transit thereto.

46. To apply stickers to Greenies packages already at retail outlets, someone would either need to be sent to each outlet, or each outlet's employees would need to be paid to apply the stickers.

47. To determine the number of retail outlets at which Greenies are sold, I instructed our Sales Category Management team to query Microstrategy data for the number of retail outlets in the United States that purchased or sold at least one package of Greenies canine dental chews between 2013 and 2015. Microstrategy collects and aggregates data from scanners at retail outlets across the United States. Microstrategy is, to my knowledge, our most robust source of information about the retail sale of Nutro products.<sup>4</sup> According to Microstrategy data, [REDACTED] different retail outlets in the United States purchased or sold at least one package of Greenies during this time period. I therefore estimate that Greenies packages would need to be stickered at [REDACTED] retail outlets.

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<sup>4</sup> Microstrategy only permits companies to purchase retail sales data concerning their own products, not competitors' products (unlike purveyors of syndicated data such as The Nielsen Company and GfK SE). Thus, we cannot access Microstrategy data on the sales of Whimzees and other brands of canine dental chews.

48. I have consulted with Nutro's sales team regarding the amount and cost of labor required to sticker all Greenies packages at each retail outlet. The sales team estimates that it would take approximately two hours of labor, per outlet, to sticker all of the Greenies packages at each outlet. This includes time spent stickering all Greenies packages on display and in back-room inventory, unpacking and repacking cases, and interfacing with outlet employees. I understand from the sales team that they would expect to pay approximately [REDACTED] per hour for this type of temporary labor.

49. Accordingly, I estimate that it would cost at least [REDACTED] ([REDACTED] outlets \* 2 hours per outlet \* [REDACTED] per hour) to apply stickers to all Greenies packages currently in inventory at all retail outlets in the United States.

50. In addition, I anticipate that a second round of stickering would be required at each of these outlets, a few weeks after the first round of stickering takes place. A second round of stickering would be necessary because many Greenies packages would still be in the distribution chain at the time the first round of stickering takes place. This would include, for example, packages that are on trucks or at distribution centers. It is not feasible or cost-effective to sticker these packages while in transit.

51. The time and cost of labor required to conduct a second-round of stickering at retail outlets would be substantially the same as the time and cost of labor for the first round.

52. Accordingly, I estimate a labor cost of at least [REDACTED] ([REDACTED] per round of stickering \* 2 rounds of stickering) to sticker all Greenies packages already at retail outlets or in transit. Adding in the estimated cost of stickers [REDACTED], I estimate that the total cost of stickering all Greenies packages already at retail outlets or in transit would be [REDACTED]

53. I consider this to be a conservative estimate for at least the following reasons. First, I have not included any travel time or other travel costs incurred by employees traveling between retail outlets. Second, I have not included any of the labor costs to communicate with and negotiate with outlets over access to their facilities or use of their employees. Third, I have not included any costs associated with shipping stickers around the country in order to make them available at the estimated [REDACTED] retail outlets that sell Greenies.

### **III. Estimated Costs to Change the Greenies Website, Television Commercials, and Point-of-Sale Displays.**

54. As explained above, in order to comply with the injunction sought by Paragon, changes would also need to be made to the Greenies website, television commercials, and point-of-sale displays. I understand that it could cost upwards of [REDACTED] to change a single television commercial, and that website changes would likely cost at least [REDACTED]. However, I have not analyzed these costs and they are not included in my total-cost estimate. This is another reason why my total-cost estimate likely underestimates the actual cost of compliance with an injunction.

### **IV. Estimated Total Cost to Comply with Paragon's Proposed Injunction.**

55. In sum, I estimate that it would cost at least [REDACTED] to change permanently Greenies' packaging to remove the Advertising Claim; at least [REDACTED] to sticker four weeks' worth of finish goods inventory at the Greenies plant; at least [REDACTED] to sticker three weeks' worth of packaging stock in inventory; at least [REDACTED] to continue to sticker new Greenies packages until permanent graphics changes can be implemented; and at least [REDACTED] to sticker all Greenies packages already at retail outlets or in transit thereto.

56. Thus, I estimate it would cost at least [REDACTED]

[REDACTED] to comply with the terms of the injunction sought by Paragon.

**V. Estimated Time Required to Comply with Paragon's Proposed Injunction.**


57. As explained above, based on previous experience with packaging changes, I estimate that it would require approximately 10 weeks to change permanently the graphics on Greenies packaging. *Supra* ¶ 19. If an injunction were entered on September 16, 2015, I anticipate that new Greenies packages would not roll off the production line until, at the earliest, November 25, 2015.

58. With regard to stickering, based on recent stickering experience with Rotations dog food, I estimate that it would require 3–5 weeks to obtain stickers to obscure the Advertising Claim on Greenies packages. I estimate that it would take an additional 4–6 weeks to distribute and apply these stickers to Greenies packages at all [REDACTED] retail outlets. I estimate that a second round of stickering would also be required at the same retail outlets, which would take an additional 4–6 weeks.

59. Accordingly, if an injunction were entered on September 16, 2015, I estimate that the process of stickering Greenies packages would not begin until mid-October 2015, and that it would not be completed until, at earliest, December 2, 2015.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed on August 26, 2015.

  
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Ladd Watts